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July 29, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street N.W.  
Washington D.C. 20554

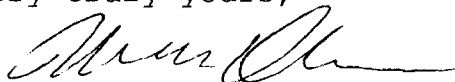
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RE: Docket No. CC 95-155

Dear F.C.C. Secretary:

Please kindly file the enclosed Common Carrier Bureau Informal Objection and Complaint re: CC Docket No. 95-155 and the issue of 888 Replication of Toll-Free Numbers. Please return the extra stamped and conformed copy in the self-addressed stamped envelope. Thank you.

Very truly yours,



Mark D. Olson  
Attorney at Law

1-800-283-1000

*Thank you!*

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|                       |   |                      |
|-----------------------|---|----------------------|
| In the Matter of      | ) |                      |
|                       | ) |                      |
| RULES PROMOTING       | ) | POST COMMENT PERIOD  |
| EFFICIENT USE,        | ) | INFORMAL OBJECTION   |
| FAIR DISTRIBUTION     | ) | AND COMPLAINT        |
| OF TOLL FREE NUMBERS; | ) |                      |
| 888 REPLICATION       | ) | CC DOCKET NO. 95-155 |
| _____                 | ) |                      |

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**888 REPLICATION**  
**INFORMAL OBJECTION AND COMPLAINT**

The National Association of Telecommunications End-Users ("NATE"), on behalf of itself and its members, hereby submits the following comments, informal objection and complaint regarding the specific issue of "888 Replication", and the method and manner in which the Commission has allowed certain toll-free subscribers to obtain and enjoy an unfair advantage over others.

1. The Commission has offered and induced 1-800 toll-free subscribers to seek protection of their 888 replicate numbers without revealing that these 888 replicates may be subjected to lottery, auction, or extraordinary taxation. Subscribers and the general public were led to believe, either by the Commission and/or their Common Carriers, that they were reserving these 888 toll-free numbers for their exclusive activation and use, and for the purpose of protecting the intellectual property rights and goodwill that has been established in their 800 numbers.

2. From on or about the middle of 1996 until July 1997, the Commission, through the DMSI, has condoned and permitted a private system in which a select group of 800 toll-free subscribers were allowed to secretly remove their 888 replicate numbers and activate them for service. Approximately 600 subscribers used this secret system, including 1-800-FLOWERS and 1-800-CLUB-MED. This secret system was not available to the public on a fair and equitable basis, and therefore violated the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

3. 1-800 Toll-Free Subscribers who requested 888 replication were misled by the Commission and their Common Carriers that they would receive protection of their equivalent 888 numbers. Except for their detrimental reliance on the Commission directives and Common Carrier representations, these 888 numbers are now subjected to possible auction, lottery, reassignment, or extraordinary fees and tax assessments that they would not otherwise be subjected to if: (a) 1-800 subscribers did not request 888 replication and simply "took their chances" to reserve their 888 replicates on the first day that 888 SAC was opened; or (b) 1-800 subscribers had insider connections with their Common Carriers and RespOrgs, like 1-800-FLOWERS and the 600 other privileged customers, and performed a secret and private release of their 888 numbers from the 888 pool.

4. Law abiding toll-free subscribers who did not have special private access to the national database of 888 numbers are now faced with irreparable harm if their 888 replicates are assigned or released to others, or released into the national database. Approximately 600 subscribers had unfair

private access to perform this loophole function, a "trick" that was not readily available to the general public. Accordingly, law abiding toll-free subscribers who attempted to "play by the rules" are now subject to discriminatory negative treatment that takes unfair advantage of their good-faith compliance with the law. The subscribers who utilized their private and special access to remove their 888 Replicates from the pool to activate them for service have obtained an unfair competitive advantage. In gaining this unfair advantage, these subscribers utilized RespOrg and Common Carrier services that were not available to the general public on a fair, just and equitable basis, and were therefore in violation of the Communications Act of 1934, as amended by the Telecom Act of 1996.


5. Telephone numbers have no value in and of themselves. 888 Replicates have no value in and of themselves. Value is created only by the efforts of the toll-free subscriber. Any value attributed to an 888 replicate is based solely upon the goodwill, trademark, trade dress and intellectual property overlay of the subscriber of its equivalent 800 number. Any fee or value assessed or estimated on an 888 replicate is derived solely from the 888 number's potential to disrupt the goodwill and trade rights of the equivalent 800 number subscriber. To the extent that the 800 holder must pay for the 888 replicate, it constitutes "extortion" since 800 subscribers will only pay for their 888 replicates to avoid unfair competition and disruption to their 800 numbers. Third parties will only bid on these 888 numbers so that they can obtain unlawful "free rider" rights on the goodwill of the 800 subscriber. Third parties will only realize profit from their acquisition of 888 replicate numbers to the extent that they can unlawfully infringe upon the 800 subscriber's goodwill and intellectual property, or to the extent that they can privately extort a huge fee from the 800 subscriber. This approach does not serve the public interest, and is in direct contravention to the Telecommunications Act of 1996.

Therefore, we hereby request the Commission immediately grant one of the following remedies:

(1) immediately release the remaining 888 replicates to their 800 subscribers for their immediate use; or (2) require the approximately 600 toll-free subscribers who used their unfair private access to the national database to return their 888 replicates to the 888 replication pool pending the Commission's final solution. Either way, the Commission should take immediate action to assure that all parties who requested 888 replication be treated in a fair and equitable manner, and will obtain the same access to their 888 replicates as 1-800-FLOWERS and the approximately 600 other subscribers.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS END-USERS ("NATE")

By: 

Mark D. Olson  
Attorney & Executive Officer  
National Association of  
Telecommunications End-Users

DATED: July 29, 1997

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